UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI, OHIO

KIMBER BALDWIN DESIGNS, LLC	:	
	:	
Plaintiff,	:	Case No. 1:16-CV-448
v.	:	HON. TIMOTHY S. BLACK
	:	
SILV COMMUNICATIONS, INC.	:	
	:	
Defendant	:	
	:	
	:	

DEFENDANT SILV'S ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT

Defendant Silv Communications, Inc. ("Silv"), through its undersigned counsel, hereby answers and asserts the following defenses to the allegations of Plaintiff's Amended Class Action Complaint ("Amended Complaint") (Doc #: 14):

I. PLAINTIFF'S PRELIMINARY STATEMENT

1. Silv denies that it called Plaintiff seeking to verify information for a directory. Silv states that on June 10, 2014, an independent telemarketer acting on behalf of Silv contacted an individual who identified herself as Cori Edinger and stated she was authorized to act on behalf of Plaintiff. Ms. Edinger agreed to engage Silv's unlimited long distance service on behalf of Plaintiff. The call was then switched to an independent verification service, whereupon Ms. Edinger answered "yes" to several questions that verified that Plaintiff wanted to use Silv's unlimited long-distance service. Based on the consent and verification of consent, Silv caused Plaintiff's long distance provider to be changed to Silv. The remaining allegations in Paragraph 1 of the Complaint state Plaintiff's characterization of its actions and assert legal conclusions to which no response is required. To the extent a response is required, Silv denies the allegations.

2. Silv denies that it slammed plaintiff. Silv admits that on February 20, 2015, the first time Plaintiff contacted Silv requesting cancellation, Silv played a recording that verified that

Plaintiff agreed to become a Silv customer on June 10, 2014. Silv denies the remaining allegations in Paragraph 2 of the Amended Complaint.

3. Silv denies the allegations in Paragraph 3 of the Amended Complaint, except Silv admits the existence of a 2013 FCC Consent Decree. Silv denies the Consent Decree is related to the practice alleged in the Amended Complaint.

4. Silv denies the allegations in Paragraph 4 of the Amended Complaint.

5. Silv denies the allegations in Paragraph 5 of the Amended Complaint.

6. Silv denies the allegations in Paragraph 6 of the Amended Complaint.

II. JURISDICTION AND VENUE

7. The allegations in Paragraph 7 of the Complaint assert legal conclusions to which no response is required.

8. The allegations in Paragraph 8 of the Complaint assert legal conclusions to which no response is required.

9. The allegations in Paragraph 9 of the Complaint assert legal conclusions to which no response is required.

III. PARTIES

10. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint and on that basis, denies them.

11. Silv admits the allegations in Paragraph 11 of the Amended Complaint, except that, to the best of its knowledge, Silv has not provided long distance telephone services to individuals.

IV. STATEMENT OF FACTS

12. The allegations in Paragraph 12 of the Complaint assert legal conclusions to which no response is required.

13. The allegations in Paragraph 13 of the Complaint assert legal conclusions to which no response is required.

14. The allegations in Paragraph 14 of the Complaint assert legal conclusions to which no response is required. Plaintiff quoted 47 U.S.C. § 258(b) out of context. 47 U.S.C. § 258 does not provide damages to a subscriber whose long distance telephone service is switched without permission. Section 258(b) provides that the only entity entitled to compensation is "the carrier previously selected by the subscriber."

15. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint and on that basis, denies them.

16. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint and on that basis, denies them.

17. Silv denies the allegations in Paragraph 17 of the Amended Complaint.

18. Silv denies the allegations in Paragraph 18 of the Amended Complaint. On June 10, 2014, a person identifying herself as Cori Edinger confirmed that she was an authorized employee and/or representative of Plaintiff. Ms. Edinger further confirmed that Plaintiff desired to use Silv's unlimited long-distance service and provided the name, address, and telephone number of the business.

19. Silv denies the allegations in Paragraph 19 of the Amended Complaint. On June 10, 2014, after agreeing to use Silv's long-distance service, Cori Edinger, was connected to an independent third-party verification service who recorded and verified the accuracy of the information Ms. Edinger provided in the previous conversation that day authorizing the switch to Silv unlimited long distance service.

20. Silv admits that Ms. Edinger was asked for either her date of birth or her mother's maiden name as a form of identification and she provided her date of birth. Silv denies the remaining allegations in Paragraph 20 of the Amended Complaint.

21. Silv is without sufficient information or knowledge to determine what representation, if any, Ms. Edinger made to Ms. Baldwin in or around August 2014 about a phone call and on that basis, denies the allegations in Paragraph 21.

22. Silv denies the allegations in Paragraph 22 of the Amended Complaint.

23. Silv denies the allegations in Paragraph 23 of the Amended Complaint.

24. Silv presently lacks the ability to confirm the authenticity of Exhibit 2. Silv, therefore, is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 24 of the Amended Complaint and on that basis, denies them.

25. Silv presently lacks the ability to confirm the authenticity of Exhibit 4. Silv specifically denies the allegation in Paragraph 25 of the Amended Complaint that the charges of $40.94 that Plaintiff received for Silv's unlimited long-distance service were unauthorized. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 25 of the Amended Complaint and on that basis, denies them.

26. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 26 of the Amended Complaint and on that basis, denies them.

27. Silv presently lacks the ability to confirm the authenticity of Exhibit 3. Silv specifically denies that the charges of $40.94 that Plaintiff received for Silv's unlimited long-distance service were unauthorized. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 27 of the Amended Complaint and on that basis, denies them.

28. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 28 of the Amended Complaint and on that basis, denies them. Silv denies having contact with Ms. Baldwin on November 18, 2014.

29. Silv denies the allegations in Paragraph 29 of the Amended Complaint. Confirmation number C4788604, according to Exhibit 4, is for a Cincinnati Bell transaction, not a Silv transaction.

30. Silv denies the allegations in Paragraph 30 of the Amended Complaint. Plaintiff had notice of the charges and voluntarily paid the charges and failed to take any action to change carriers.

31. The lack of a time-frame allegation renders Silv unable to answer paragraph 31 of the Amended Complaint. Silv denies that Plaintiff "overpaid." Plaintiff voluntarily paid Silv's charges. Plaintiff received credit for several Silv charges that it paid.

32. Silv denies the allegations in Paragraph 32 of the Amended Complaint.

33. Silv presently lacks the ability to confirm the authenticity of Exhibit 4. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 33 of the Amended Complaint and on that basis, denies them.

34. Silv presently lacks the ability to confirm the authenticity of Exhibit 4. Silv denies the allegation in Paragraph 34 of the Amended Complaint that it spoke with Plaintiff on November 18, 2014. Silv denies that its charges were fraudulent.

35. No time frame is provided in this allegation. Silv denies that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 35 of the Amended Complaint and on that basis, denies them.

36. No time frame is provided for this allegation. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 36 of the Amended Complaint and on that basis, denies them.

37. Silv denies that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 37 of the Amended Complaint and on that basis, denies them.

38. Silv presently lacks the ability to confirm the authenticity of Exhibit 5. Silv denies the remaining allegations in Paragraph 38 of the Amended Complaint.

39. Silv presently lacks the ability to confirm the authenticity of Exhibit 6 and on that basis, denies the allegations in Paragraph 39 of the Amended Complaint.

40. Silv denies that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 40 of the Amended Complaint and on that basis, denies them.

41. Silv denies that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 41 of the Amended Complaint and on that basis, denies them.

42. Silv denies the allegation in Paragraph 42 of the Amended Complaint that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv denies that Plaintiff contacted Silv before February 20, 2015 to cancel its service.

43. Silv denies that Plaintiff contacted Silv before February 20, 2015 to cancel its service. Silv admits that during a phone call on February 20, 2015, Plaintiff's employee or representative claimed that Plaintiff previously contacted Silv. Silv told Plaintiff that Silv denied that Plaintiff previously called and told Plaintiff that Silv lacked any record of a previous call. Silv admits that it played a June 10, 2014 recording that verified that Plaintiff requested that Silv become Plaintiff's long-distance provider during two phone calls with Plaintiff on February 20, 2015. Silv further admits that it stated that it had consent to switch Plaintiff's long-distance service to Silv and that Silv told Plaintiff that Silv had consent to make the switch. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 43 of the Amended Complaint and on that basis, denies them.

44. Silv denies the allegations in Paragraph 44 of the Amended Complaint.

45. Silv denies the allegations in Paragraph 45 of the Amended Complaint.

46. Silv denies the allegations in Paragraph 46 of the Amended Complaint.

47. Silv denies the allegations in Paragraph 47 of the Amended Complaint.

48. Silv denies the allegations in Paragraph 48 of the Amended Complaint.

49. Silv denies the allegations in Paragraph 49 of the Amended Complaint.

50. Silv admits that Plaintiff requested that Silv cancel Plaintiff's account on February 20. 2015. Silv denies the remaining allegations in Paragraph 50 of the Amended Complaint.

51. Silv presently lacks the ability to confirm the authenticity of Exhibit 7. Silv, therefore, is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 51 of the Amended Complaint and on that basis, denies them.

52. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 52 of the Amended Complaint and on that basis denies them.

53. Silv is without sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 53 of the Amended Complaint that it paid the full amount. Plaintiff voluntarily made the payment. Silv denies that Plaintiff had any reasonable fear that its telephone service would be discontinued.

54. Silv admits that it ceased providing long-distance service to Plaintiff as soon as Plaintiff's February 20, 2015 request was processed, which was reflected in Plaintiff's April invoice, and that Cincinnati Bell stopped billing Plaintiff for the service. Silv's March invoice, covering calls through February 20, 2015, was in process at the time Plaintiff requested cancellation and could not be stopped. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 54 of the Amended Complaint and on that basis, denies them.

55. Silv denies that its charges were fraudulent. Plaintiff voluntarily paid all charges. Silv denies that Plaintiff never received reimbursement for Silv charges. Plaintiff did not request credit for all Silv charges.

56. Silv properly treated Plaintiff, and Silv denies the remaining allegations in Paragraph 56 of the Amended Complaint.

57. Silv denies the allegations in Paragraph 57 of the Amended Complaint.

58. Silv denies the allegations in Paragraph 58 of the Amended Complaint.

59. Silv denies the allegations in Paragraph 59 of the Amended Complaint.

60. Silv denies the allegations in Paragraph 60 of the Amended Complaint.

61. Silv is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 61 of the Amended Complaint and on that basis, denies them.

62. Silv is unable to confirm the authenticity of the statements in Paragraphs 62 a-q. and on that basis, denies them. Silv further denies that the statements referenced in Paragraphs 62 a-q on the basis that the allegations contained in the Paragraphs are false. The allegations in the statements in Paragraphs 62 a-q of the Amended Complaint are inadmissible hearsay and cannot be used to establish the truth of the matters asserted.

63. Silv is unable to confirm the authenticity of the statements in Paragraphs 63 a-c. and on that basis, denies them. Silv further denies that the statements referenced Paragraphs 63 a-c on the basis that the allegations contained in the Paragraphs are false. Silv further states that the allegations in the statements in Paragraphs 62 a-q of the Amended Complaint are inadmissible hearsay and cannot be used to establish the truth of the matter asserted.

64. Silv is unable to confirm the authenticity of the statements in Paragraphs 64 a-d. and on that basis, denies them. Silv further denies that the statements referenced Paragraphs 64 a-d on the basis that the allegations contained in the Paragraphs are false. Silv further states that the allegations in the statements in Paragraphs 64 a-d of the Amended Complaint are inadmissible hearsay and cannot be used to establish the truth of the matter asserted.

65. Silv is unable to confirm the authenticity of the statements in Paragraphs 65 a-b. and on that basis, denies them. Silv further denies that the statements referenced Paragraphs 65 a-b on the basis that the allegations contained in the Paragraphs are false. Silv further states that the allegations in the statements in Paragraphs 65 a-b of the Amended Complaint are inadmissible hearsay and cannot be used to establish the truth of the matter asserted.

V. CLASS ACTION ALLEGATIONS

66. Silv admits that Plaintiff purports to bring this action as a class action and that Plaintiff attempts to define the alleged Class in Paragraph 66. Silv denies that this action is appropriate for class treatment or that Plaintiff and the putative class members are entitled to the relief requested or any other relief. The proposed "Class" consisting of "All individuals and businesses switched to and billed by Silv for long distance telephone service, anywhere in the United States" involves too many individual issues and management issues to qualify for class treatment. Silv denies that the people or entities encompassed in the proposed class definition are similarly situated. Silv denies the remaining allegations in Paragraph 66 of the Amended Complaint.

67. Silv admits that Plaintiffs purport to bring this action as a class action and that Plaintiff attempts to define the alleged Ohio Class Subclass in Paragraph 67. Silv denies that this action is appropriate for class treatment or that Plaintiff and the putative class members are entitled to the relief requested or any other relief. The proposed "Class" consisting of "All individuals and businesses switched to and billed by Silv for long distance telephone service, anywhere in Ohio" involves too many individual issues and management issues to qualify for class treatment. Silv denies that the people or entities encompassed in the proposed class definition are similarly situated. Silv denies the remaining allegations in Paragraph 67 of the Amended Complaint.

68. Silv admits that Plaintiff seeks to exclude certain individuals and entities from the class definitions.

69. Silv is without knowledge or information sufficient to form a belief as to the truth of the allegations that the current names and addresses for each member of the putative classes are within Silv's records. The allegations in the second sentence state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in the second sentence of Paragraph 69 of the Amended Complaint.

70. The allegations in the first sentence state legal conclusions, to which no response is required. To the extent the allegations in the second sentence are intended to be factual, Silv denies

the allegations in the second sentence of Paragraph 70 of the Amended Complaint. Silv further states that its lack of knowledge including how Plaintiff calculated the number of class members to arrive at Plaintiff's estimate requires Silv to deny the allegations in the second and third sentences of Paragraph 70. The allegations in the last sentence state legal conclusions, to which no response is required. To the extent the allegations in the last sentence are intended to be factual, Silv denies the allegations in the last sentence of Paragraph 70 of the Amended Complaint. Silv denies that this case qualifies for class treatment and denies that the parties, the court, and society will benefit from class certification.

71. The allegations in Paragraph 71 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 71 of the Amended Complaint.

72. The allegations in Paragraph 72 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 72 of the Amended Complaint.

73. The allegations in Paragraph 73 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 73 of the Amended Complaint.

74. Silv denies the allegations in Paragraph 74 of the Amended Complaint. Individual factual issues predominate over common factual issues. Further, Paragraph 74 of the Amended Complaint asserts legal conclusions, to which no response is required.

75. The allegations in Paragraphs 75 a-i of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraphs 75 a-i of the Amended Complaint. Silv further states that the alleged common questions in Paragraphs 75 a-i each involve individual fact determinations that are incapable of being resolved on a class-wide basis.

76. The allegations in Paragraphs 76 a-b of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraphs 76 a-b of the Amended Complaint. Silv further states that the alleged common questions in Paragraphs 76 a-b each involve individual fact determinations that are incapable of being resolved on a class-wide basis.

77. The allegations in Paragraph 77 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 77 of the Amended Complaint.

78. The allegations in Paragraph 78 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 78 of the Amended Complaint. Silv further states that the need to resolve individual fact determinations renders the case incapable of class-wide resolution.

79. The allegations in Paragraph 79 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations in the second sentence are intended to be factual, Silv denies the allegations in Paragraph 79 of the Amended Complaint. Silv further states that the need to resolve individual fact determinations renders the case incapable of class-wide resolution.

80. The allegations in Paragraph 80 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations sentence are intended to be factual, Silv denies the allegations in Paragraph 80 of the Amended Complaint. Silv further states that alternate methods exist to resolve Plaintiff's claims that are more expeditious, more economical and therefore are superior to a class action that involves expensive and complex determinations of individual issues.

81. The allegations in Paragraph 81 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 81 of the Amended Complaint.

82. The allegations in Paragraph 82 of the Amended Complaint state legal conclusions, to which no response is required. To the extent the allegations are intended to be factual, Silv denies the allegations in Paragraph 82 of the Amended Complaint.

VI. STATEMENT OF CLAIMS

COUNT ONE

VIOLATIONS OF THE WIRE OR RADIO COMMUNICATIONS ACT (47 U.S.C. § 258(a))

83. Silv repeats and realleges its responses to Paragraphs 1 through 82 of this Answer as though set forth fully herein.

84. The allegations in Paragraph 84 of the Amended Complaint state legal conclusions, to which no response is required.

85. The allegations in Paragraph 84 of the Amended Complaint state legal conclusions, to which no response is required

86. The allegations in Paragraph 86 of the Amended Complaint state legal conclusions, to which no response is required

87. The allegations in Paragraph 87 of the Amended Complaint state legal conclusions, to which no response is required

88. Silv denies the allegations in Paragraph 88 of the Amended Complaint.

89. Silv denies the allegations in Paragraph 89 of the Amended Complaint.

90. Silv denies the allegations in Paragraph 90 of the Amended Complaint. Plaintiff misquotes 47 U.S.C. § 258(b). 47 U.S.C. § 258 does not provide damages to a subscriber who violates the procedures in § 258(a). To the contrary, § 258(b) provides that the only entity entitled to compensation is "the carrier previously selected by the subscriber."

91. The allegations in Paragraph 91 of the Amended Complaint state legal conclusions, to which no response is required.

92. The allegations in Paragraph 92 of the Amended Complaint state legal conclusions, to which no response is required.

93. The allegations in Paragraph 93 of the Amended Complaint state legal conclusions, to which no response is required.

94. The allegations in Paragraph 94 of the Amended Complaint state legal conclusions, to which no response is required.

95. Silv denies the allegations in Paragraph 95 of the Amended Complaint.

COUNT TWO

OHIO COMMON LAW FRAUD (Ohio Sub Class)

96. Silv repeats and realleges its responses to Paragraphs 1 through 95 of this Answer as though set forth fully herein.

97. The allegations in Paragraph 97 of the Amended Complaint state legal conclusions, to which no response is required.

98. Silv denies the allegations in Paragraph 98 of the Amended Complaint.

99. Silv denies the allegations in Paragraph 99 of the Amended Complaint.

100. Silv denies that it made misrepresentations to Plaintiff. Silv further denies the remaining allegations in Paragraph 100 of the Amended Complaint.

101. Silv denies the allegations in Paragraph 101 of the Amended Complaint.

102. Silv denies the allegations in Paragraph 102 of the Amended Complaint.

103. Silv denies the allegations in Paragraph 103 of the Amended Complaint.

104. Silv denies the allegations in Paragraph 104 of the Amended Complaint.

105. Silv denies the allegations in Paragraph 105 of the Amended Complaint.

106. Silv admits that Plaintiff contacted Silv in February 2015. Silv denies the remaining allegations in Paragraph 106 of the Amended Complaint.

107. Silv admits that during a February 20, 2015 phone call Silv played a recording that verified that Plaintiff had consented to Silv becoming Plaintiff's long-distance provider. Silv further

admits that after the call, Silv initiated action to cancel the long-distance service and did cancel the service and secured refunds for Plaintiff. Plaintiff requested no further refunds. Silv denies the remaining allegations in Paragraph 107 of the Amended Complaint.

108. Silv denies the allegation in Paragraph 108 of the Amended Complaint that it continued to bill Plaintiff. Cincinnati Bell provided the billing service. Consistent with Plaintiff's request, Silv took the appropriate steps to cancel Plaintiff's account with Silv unlimited long-distance service. The March billing was already in process at the time of the February 20, 2015 call.

109. Silv denies the allegations in Paragraph 109 of the Amended Complaint.

110. Silv denies the allegations in Paragraph 110 of the Amended Complaint.

COUNT THREE

UNJUST ENRICHMENT

111. Silv repeats and realleges its responses to Paragraphs 1 through 110 of this Answer as though set forth fully herein.

112. Silv denies the allegations in Paragraph 112 of the Amended Complaint.

113. Silv admits that it provided unlimited long-distance service to Plaintiff for which Silv received compensation.

114. Silv admits that it received compensation for the unlimited long-distance service that it provided to Plaintiff. Silv denies the allegation in Paragraph 114 of the Amended Complaint that Plaintiff neither needed nor requested Silv's service.

115. Silv denies the allegations in Paragraph 115 of the Amended Complaint.

116. Silv denies the allegations in Paragraph 116 of the Amended Complaint.

COUNT FOUR

OHIO TELECOMMUNICATIONS FRAUD (Ohio Sub Class)

117. Silv repeats and realleges its responses to Paragraphs 1 through 116 of this Answer as though set forth fully herein. The allegations in Paragraph 117 of the Amended Complaint state legal conclusions, to which no response is required.

118. Silv denies the allegations in Paragraph 118 of the Amended Complaint.

119. Silv denies the allegations in Paragraph 119 of the Amended Complaint.

120. Silv denies the allegations in Paragraph 120 of the Amended Complaint.

121. Silv denies the allegations in Paragraph 121 of the Amended Complaint.

122. Silv denies the allegations in Paragraph 122 of the Amended Complaint.

PRAYER FOR RELIEF

Silv denies that Plaintiff, and the class it purports to represent, are entitled to any of the relief sought in their Prayer for Relief.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any issue or element that would otherwise rest with Plaintiffs, and expressly denying any and all wrongdoing, Silv asserts the following defenses:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim with Particularity)

Plaintiffs have failed to plead the allegations in the Complaint with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure and by the local rules of this Court.

THIRD AFFIRMATIVE DEFENSE
(Not Maintainable as a Class Action)

This action cannot be maintained as a class action because Plaintiffs cannot meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, including the Rule's subsections.

FOURTH AFFIRMATIVE DEFENSE
(Lack of Private Right of Action)

The statutes on which Plaintiff relies do not create a private right of action.

FIFTH AFFIRMATIVE DEFENSE
(Lack of Standing)

Plaintiffs and/or some or all putative class members are not entitled to relief because they lack standing.

SIXTH AFFIRMATIVE DEFENSE
(Compliance with the Law)

Plaintiff's claims are barred, in whole or in part, because all of Silv's activities as alleged in the Complaint were in compliance with all applicable laws, regulations, and rules.

SEVENTH AFFIRMATIVE DEFENSE
(Substantial Compliance)

Plaintiff's claims are barred, in whole or in part, because Silv has substantially complied with the requirements of the law as they pertain to this lawsuit and such substantial compliance bars Plaintiff's claims.

EIGHTH AFFIRMATIVE DEFENSE
(Conduct Not Unlawful)

Plaintiff's claims are barred, in whole or in part, because the switching of Plaintiff from Cincinnati Bell to Silv was lawful.

NINTH AFFIRMATIVE DEFENSE
(No Ascertainable Loss)

Plaintiff and the putative class members did not sustain any ascertainable loss.

TENTH AFFIRMATIVE DEFENSE
(Good Faith)

Plaintiff's claims are barred, in whole or in part, by the doctrine of good faith.

ELEVENTH AFFIRMATIVE DEFENSE
(Intervening Acts of Others)

The damages sustained by Plaintiff, if any, were proximately caused by the intervening and superseding actions of others, which actions bar, preclude, and/or diminish Plaintiff's recovery against Silv.

TWELFTH AFFIRMATIVE DEFENSE
(Exclusive/Primary Jurisdiction)

Plaintiff's claims are barred by the exclusive and/or primary jurisdiction doctrines.

THIRTEENTH AFFIRMATIVE DEFENSE
(Puffery)

Plaintiff's claims are barred to the extent that any alleged deceptive statements constitute puffery.

FOURTEENTH AFFIRMATIVE DEFENSE
(Justification/Business Judgment Rule)

Silv's conduct is privileged or otherwise immunized on the basis of business justification and/or the business judgment rule.

FIFTEENTH AFFIRMATIVE DEFENSE
(Statutes of Limitations)

Plaintiff's and/or some or all putative class members' claims are barred in whole or in part by the applicable statutes of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Waiver)

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Estoppel)

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

NINETEENTH AFFIRMATIVE DEFENSE
(Laches)

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

TWENTIETH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

Plaintiff's and/or some or all putative class members' claims are barred, in whole or in part, to the extent they failed to mitigate their damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(No Actual Injury)

Plaintiffs and/or some or all putative class members' claims fail because they suffered no actual injury and suffered no damage.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

Plaintiff's and/or some or all putative class members' claims are barred by the doctrine of accord and satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)

Plaintiff's claims for equitable relief are barred, in whole or in part, because they have an adequate remedy at law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(No Entitlement to Punitive Damages)

To the extent the Complaint can be construed as seeking punitive damages, Plaintiffs fail to state facts that would entitle them to such an award, and any such award would violate the federal constitution and state constitutions.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Benefit Received)

Plaintiff and putative class members received a substantial benefit from Silv and their damages and/or restitution, if any, should be reduced accordingly.

THIRTY-FOURTH AFFIRMATIVE DEFENSE
(Voluntary Payment)

Plaintiff and putative class members voluntarily paid for Silv's long-distance service and their claims are barred by the Voluntary Payment Doctrine.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(Acceptance of Refunds)

Plaintiff and other putative class members accepted refunds and relinquished their claims or reduced any damages they claim to have sustained.

THIRTY-SIXTH AFFIRMATIVE DEFENSE
(Consent/Ratification)

Plaintiff and putative class members consented to all of Silv's acts or omissions which give rise to the occurrences alleged in the Amended Complaint and subsequently ratified that conduct.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE
(Speculative Damages)

Plaintiff's alleged damages and the alleged damages of the putative class members are uncertain and, therefore, not compensable, in whole or in part.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE
(Admissions)

Plaintiff's claims are barred in full or in part due to admissions that Plaintiff has made.

THIRTY-NINTH AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

Silv alleges that it may have additional defenses that are not now fully known and of which it is not presently aware. Accordingly, Silv reserves the right to raise and assert additional defenses which may be appropriate upon further discovery in this matter.

Respectfully Submitted,

/s/ *Robert A. Steinberg*

Robert A. Steinberg (#0032932)
Robert Steinberg Co LPA
9050 Ambercreek Dr.
Cincinnati, OH 45236
(513) 510-5122
r.steinberg@robertsteinberglaw.com

/s/ *Terrence L. Goodman*
Terrence L. Goodman (#0009148)
Law Office of Terrence L. Goodman, LLC
17 Heritage Rd.
Cincinnati, OH 45241
(513) 984-3266
terrygoodmanlaw@earthlink.net

Attorneys for Defendant Silv Communication Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel via the CM/ECF system on the date of filing this document.

/s/ *Robert A. Steinberg*
Robert A. Steinberg